

# DOMESTIC VIOLENCE:

CONSIDERATIONS FOR FAMILY LAW ATTORNEYS

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# DOMESTIC VIOLENCE & ASSET DIVISION

## ○ Fault vs. No Fault

- > Domestic violence as a “causal factor” of the breakdown of the marriage
  - Relevant if the victim can prove that the abuse was a causal factor in the marital breakdown
- > Domestic violence and “economic misconduct”
  - Relevant if the abuse creates an economic impact such as increased medical bills or decreased ability to work
- > “Egregious” domestic violence
  - Relevant if the abuse is so egregious as to “shock the conscience of the court”
- > Exclusion of all fault
  - Irrelevant in dividing the marital estate regardless of the circumstances

# DOMESTIC VIOLENCE & ASSET DIVISION IN MONTANA

- “Equitable” division of the marital estate
  - > “[T]he court, **without regard to marital misconduct**, shall . . . finally equitably apportion between the parties the property and assets belonging to either or both. . .” Mont. Code Ann. § 40-4-202(2015)
- In re the Petition of A. Caroline Fenzau and William Fenzua, 2002 MT 197, 311 Mont. 163, 54 P.3d 43.
  - > “Consideration of the economic effects of abuse, such as medical expenses and a person's ability to work and earn an income, is not an interjection of fault or an assignment of blame which is contemplated by the statutory prohibition of judicial consideration of marital misconduct. If the economic impact of abuse is excluded from consideration in making a division of the marital estate, a truly equitable apportionment cannot result.”

"When a dissolution of marriage or parenting action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the abuse occurred. . . ." Mont. Code Ann. § 40-4-121(2) (2015).

"If one of the parties to an order of protection files for dissolution of marriage or files a parenting action after the order of protection is filed but before the hearing is conducted, the hearing must be conducted in the court in which the order of protection was filed. Either party may appeal or remove the matter to the district court prior to or after the hearing." Mont. Code Ann. § 40-4-121(3).

# ISSUES TO CONSIDER BEFORE FILING

- Safety considerations:
  - > Verify a safe method to communicate with your client regarding their case (cell phone, home phone, mail, email etc.)
  - > Identify whether it is safe to reveal your client's residential address, occupation, or other clues to her location in pleadings
  - > Discuss when, where, and how to serve the opposing party
- Financial considerations:
  - > Temporary financial support
    - Mont. Code Ann. § 40-4-121 (2015)
  - > Attorney's fees and costs
    - Mont. Code Ann. § 40-4-110(1) (2015)
    - Mont. Code Ann. § 40-2-210 (2015)

# PREPARING YOUR CLIENT FOR COURT

- Explain the court process
  - > Layout of the courtroom
  - > Direct, cross, re-direct, and re-cross
  - > What to do after an objection is made
- Prepare your client to testify
- Plan for pragmatic issues
  - > Where and when to meet
  - > Parking and transportation
- Safety plan for the courtroom
  - > Request that a bailiff be present in the courtroom
  - > Position yourself so that you are in between your client and the opposing party
  - > Ask the court to require that the opposing party remain in the courtroom until your client leaves the courthouse

# POST-DECREE ENFORCEMENT

## ○ Prevention

- > Carefully draft all documents to avoid enforcement issues
- > Utilize the power of the court to transfer assets
  - “If the Respondent fails to transfer the 1998 Dodge Ram into the Petitioner’s name within the time provided, the Petitioner is authorized to request that the Montana Department of Motor Vehicles transfer the title of the vehicle into the Petitioner’s name without authorization from the Respondent.”

## ○ Contempt proceedings

- > Mont. Code Ann. § 37–61–421(2015)

“An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.”

Mont. Code Ann. § 37–61–421 (2015)

“We find Doug to be a vexatious litigant and award Candace her costs and fees associated with this appeal to be determined on remand to the District Court. Doug is prohibited from filing any further appeals in this case or any case in Montana in which Candace is the appellee without first obtaining this Court's approval. In addition, Doug is precluded from filing any civil action against Candace in Montana without first obtaining the relevant district court's approval. These sanctions are necessary to curb further abusive litigation by Doug.”

Guill v. Guill, 2014 MT 316, ¶ 21, 377 Mont. 216, 339 P.3d 81.

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